IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5917 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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RASHMIBEN KANTILAL PANDYA - Petitioner
Versus
STATE OF GUJARAT THROUGH SECRETARY & 3 - Respondents

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Appearance :
MR SHALIN N MEHTA for Petitioner.
MR MAULIK NANAVATI, ASST. GOVERNMENT PLEADER for Respondents.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/06/2006

ORAL JUDGMENT

1. Present Special Civil Application is filed under Article 226 of the Constitution of India initially for an appropriate direction quashing and

setting aside the impugned order of reversion dated 05.08.1996 and subsequently by amendment the petitioner has prayed for declaration of order to hold that the seniority of the petitioner should be fixed on the basis of date of appointment i.e. 30.07.1980 and further to hold that the seniority lists dated 29.09.1995 and 20.05.1996 are illegal and bad in law in as much as the seniority of the petitioner is not fixed on the basis of date of joining the services.

2. The facts leading to the present Special Civil Application in nutshell are as under:

That the petitioner joined the services as Gujarati Clerk cum Typist in the office of District Treasury Office, Rajkot pursuant to the order of appointment dated 27.07.1980 and the petitioner joined the services of the District Treasury Office at Rajkot as Gujarati Clerk Cum Typist on 30.07.1980. The petitioner was send for pre-service training and completed the same on 07.02.1983. By order dated 20.03.1984 issued by the Senior Treasury Officer, Rajkot the petitioner was declared as surplus and was relieved from the Office of Senior Treasury Officer on 20.03.1984 with instructions to report the Office

of Collector, Rajkot. Thereafter, the Deputy Collector, passed an order to post the petitioner to work under the Assistant Director, Food and Drugs Department, Rajkot Circle by order dated 21.03.1984. Then on 21.03.1984 the petitioner joined the services of respondent No.4 – i.e. The Assistant Commissioner, Food and Drugs, Administration, Rajkot. That by order dated 06.11.1986 issued by respondent No.2 – Commissioner, Food and Drugs Control Administration, Gandhinagar, the petitioner came to be promoted to the post of Senior Clerk. The Commissioner of Food and Drugs Control – respondent No.2 issued seniority list on 20.05.1996 wherein the name of the petitioner was shown at Sr.No. 167 considering the date of appointment as 21.03.1984. It is the case on behalf of the petitioner that prior to said seniority list on 29.09.1995 a seniority list was published wherein the name of the petitioner is shown at Sr.No. 168 and the date of appointment was erroneously shown as 21.03.1984. It is submitted that on 24.10.1994 a seniority list was published and the name of the petitioner was shown at Sr.No. 103 considering the date of appointment as 30.07.1980. It is submitted that subsequently, on 29.06.1995, another seniority list was published wherein the date of appointment is

shown as 30.07.1980 wherein the name of the petitioner is shown at Sr.No.99. It is submitted that thereafter the respondents issued seniority list dated 29.09.1995 and 20.05.1996 wherein the name of the petitioner is shown at Sr.No. 168 and 167 respectively and in the said seniority lists the date of joining is shown as 21.03.1984. It is submitted that the actual date of joining should be considered as 30.07.1980 the day on which the petitioner joined the services in the District Treasury Office, Rajkot and not 21.03.1984 the day on which the petitioner joined the services in the Food and Drugs Department after declaring the petitioner as surplus. It is submitted that thereafter, on the basis of wrong fixation of seniority considering the date of joining as 21.03.1984, the impugned order of reversion has been passed on 05.08.1996 and the petitioner was reverted from the post of Senior Clerk to Clerk. It is submitted that the seniority list prepared on 20.05.1996 is proposed seniority list and the employees were called upon to give objections. The petitioner made representation, however, the petitioner is not informed as to whether the representation has been accepted or rejected. However, on the basis of seniority so published, the

respondents have issued the order of reversion which is absolutely illegal.

3. Mr. Shalin Mehta, learned Advocate appearing on behalf of the petitioner has vehemently submitted that the action of the respondents in considering the date of appointment of the petitioner as 21.03.1984 is absolutely illegal and arbitrary. It is submitted that the petitioner was appointed on Centralized Recruitment Scheme and was initially appointed to the post of Gujarati Clerk Cum Typist in the Office of District Treasury Office, Rajkot. However, subsequently, she was declared surplus by letter dated 20.03.1984 and thereafter, the petitioner was absorbed and/or posted under the Assistant Director, Food and Drugs, Rajkot Circle and on the very next day i.e. on 21.03.1984, the petitioner joined the services under the Assistant Director, Food and Drugs Department, Rajkot Circle. It is submitted that therefore, the services of the petitioner should be treated as continuous and for the purpose of seniority the date of appointment should be considered as 30.07.1980. Mr. Mehta, learned Advocate has relied upon Circular dated 23.12.1977 issued by the General Administration Department, Government of

Gujarat for fixation of seniority of persons selected in the Centralized Recruitment scheme. It is submitted by him that by the aforesaid scheme, the seniority so fixed shall remain undisturbed in the event of reallotment of the candidate from one office to other office for administration convenience if there is no break in the service. Therefore, it is submitted that fixation of seniority of the petitioner considering date of joining as 21.03.1984 instead of 30.07.1980 is absolutely illegal and contrary to the Circular and Notification issued by the State Government. Mr. Mehta, learned Advocate has also relied upon the Notification dated 30.03.1994 and has submitted that as per the said Notification the seniority of the Clerks and Clerk-Typists should be governed on the principle of continuous officiation. Therefore, it is requested to allow the present Special Civil Application.

4. The petition is opposed by the respondents – State Government and affidavit-in-reply is filed. It is submitted that reversion of the petitioner is by refixation of the seniority list by giving effect to the statutory rules framed by Government of Gujarat and to the judgment delivered in the case of ***Safimiya***

Malek V/s. State of Gujarat reported in ***33(1) GLR 704.*** It is submitted that the petitioner was surplus and therefore, considering the Circular issued by the General Administration Department, Government of Gujarat dated 18.04.1978 if the employee is declared surplus and is absorbed in another department his seniority should be considered at the bottom of the list and below all those employees who are working in the department where he is absorbed. Therefore, it is submitted that the petitioner is appropriately placed in the seniority list by considering the date of appointment as 21.03.1984 i.e. the day on which she was posted in the Food and Drugs Department. It is submitted that the petitioner was relieved from the office of District Treasury Office, Rajkot vide order dated 20.03.1984. However, she came to be absorbed pursuant to the fresh allocation made by the Collector, Rajkot and vide order dated 03.04.1984, the Assistant Director of Food and Drugs passed an order in favour of the petitioner. It is also further submitted that the seniority of Clerical staff in each of the office remains distinct and separate and there is no common pool for considering the continuous services for throughout the State and/or within the respective zone. It is submitted that the

petitioner was rendered surplus and accordingly her due rights and claim in the seniority list is given pursuant to the entry in the Food and Drugs Control Administration. Under the circumstances, it is requested to dismiss the present Special Civil Application by submitting that no illegality has been committed in considering the date of appointment of the petitioner as 21.03.1984, which was the day of entry in the Foods and Drugs Department Administration. It is also further submitted that even the present Special Civil Application is also required to be dismissed on the ground of non-joinder of affected parties as if the relief as prayed for is granted, then the employees above the petitioner in the seniority list are likely to be affected who are not party to the present proceedings as seniority will have to be rearranged.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. At the outset it is required to be noted that the petitioner has relied upon the seniority list dated 29.06.1994 and 24.10.1994 in support of her submission that the earlier the petitioner was

rightly placed in the seniority list by considering her date of appointment / entry in the department as 30.07.1980. However, it is to be noted that both the aforesaid Seniority lists dated 29.06.1994 and 24.10.1994 were provisional seniority list and not final seniority list. For the first time, the final seniority list came to be published on 29.09.1995 in which the petitioner was placed at Sr.No. 168 considering her date of appointment as 21.03.1984. Thus reliance placed upon the seniority lists dated 29.06.1994 and 24.10.1994 is displayed and as the said seniority lists were provisional seniority lists, the same could not have been replied upon by the petitioner as if the same are final seniority lists. The petitioner has heavily relied upon the Circular dated 23.12.1977 and according to the petitioner, the seniority so fixed shall remain undisturbed in the event of reallotment of candidate from one office to other office for administrative convenience if there is no break in service. However, on fair reading of the Circular dated 23.12.1977, the said Circular issued by the General Administration Department, Government of Gujarat is though with respect to fixation of seniority of persons selected under the Centralized Recruitment

scheme but basically the same is with respect to fixation of seniority from the date of passing the post training examination or from the date of regular appointment which ever is later. In the said Circular it is so provided that the seniority list so fixed shall remain undisturbed in the event of reallotment of a candidate from one office to other office on administrative grounds, if there is no break in his service and if his Juniors in other office have continued in service. In the said Circular, there is no mention with regard to candidate / employee who is declared surplus and whose services were required to be terminated. As such with regard to such candidates / employees a Circular has been issued by the General Administration Department, State of Gujarat dated 18.04.1978 and as per the said Circular, if the employee is posted in another department on declaring surplus from one department, in that case he is required to be placed below all those employees who were working in the department where he is absorbed on declaring him as surplus. Thus so far as the petitioner is concerned, she would be governed by the Circular dated 18.04.1978 and considering the said Circular if the petitioner is placed below all those

employees already serving in Food and Drugs Department by considering her date of appointment as 21.03.1984, it cannot be said that there is any illegality committed by the respondents.

7. It is required to be noted that the petitioner was already declared surplus from the office of District Treasury Office, Rajkot. However, subsequently, she was posted in another department i.e. under the Assistant Director, Food and Drugs Department, Rajkot Circle and she joined the duty in the said department on 21.03.1984. Under the circumstances no illegality has been committed by the respondents in considering the date of appointment of the petitioner as 21.03.1984. It is required to be noted that seniority list is prepared of the Junior Clerks / Clerk cum Typist serving in Food and drugs department and the seniority of Clerical staff in each of the office remains distinct and separate and there is no common pool for considering continuous service for throughout the state and /or within the respective zone. If the submission of the petitioner is accepted and her date of appointment is considered as 30.07.1980 then all those employees who are already working / serving in Food and drugs

Department would be affected and though in the Food and Drugs department such a employee is working / serving in the said department prior to 21.03.1984, in that case, if the date of appointment of the petitioner is considered as 30.07.1980, seniority of those employees who were working in the Food and Drugs Department would be affected, though in the food and drugs department the petitioner has made his entry on 21.03.1984. Under the circumstances, the prayer of the petitioner to consider her date of appointment as 30.07.1980 cannot be granted as admittedly her date of entry in the Food and Drugs Department is 21.03.1984.

8. It is required to be noted that the employee serving in the Food and Drugs Department are likely to be affected if the relief as prayed for is granted and if the date of appointment of the petitioner is considered as 30.07.1980 instead of 21.03.1984. In that case, the seniority list will have to be rearranged and the employees already working in the Food and Drugs Department would be affected and would be placed down below the petitioner. Thus they will be directly affected if the relief as prayed for is granted, however, none of the affected employees are

party to the present proceedings.

9. In the case of ***Prabodh Verma and Ors. V/s. State of Uttar Pradesh and ors.*** reported in ***(1984) 4 SCC 251,*** the Hon'ble Supreme Court has held that the High Court ought not to hear and dispose of a Writ Petition under Article 226 without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually.

10. Similar view has been taken by the Hon'ble Supreme Court in the case of ***K.H.Siraj v/s. High Court of Kerala and ors*** reported in ***(2006) 6 SCC 395***, even in the said decision, the Hon'ble Supreme Court observed that all the candidates in the select list who are likely to be affected on rearrangement of select list shall have to be impleaded as parties and even the publication in the newspaper does not cure the said defect.

Under the circumstances, when the affected

employees likely to be affected on rearrangement of seniority list if the relief as prayed for is granted and the date of appointment of the petitioner is considered as 30.07.1980, are not party respondents, the present Writ Petition is also to fall on the ground of absence of necessary parties in the party array.

11. Now so far as the challenge to the order of reversion is concerned, it is specific case on behalf of the respondents in the affidavit-in-reply that the order of reversion is passed on refixation of seniority by giving effect to the statutory rules framed by the Government of Gujarat and to the Judgment of this Court delivered in the case of ***Safimiya Malek v/s. State of Gujarat*** reported in ***33(1) GLR 704***. Under the circumstances, there is no illegality in the order of reversion. It is to be noted that by order dated 23.07.1997, this Court has already vacated ad interim relief and the petitioner is already reverted since 1997.

12. For the reasons stated above, the petition fails and is required to be dismissed and is

accordingly dismissed. Rule is discharged. In the facts and circumstances of the case, there shall be no order as to costs.

[M.R.Shah, J.]

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